

**UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT**

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**FILED**  
**United States Court of Appeals**  
**Tenth Circuit**

**September 9, 2014**

**Elisabeth A. Shumaker**  
**Clerk of Court**

STATE OF WYOMING,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; GINA  
MCCARTHY, in her official capacity as  
Administrator of the U.S. Environmental  
Protection Agency,

Respondents.

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POWDER RIVER BASIN RESOURCE  
COUNCIL; NATIONAL PARKS  
CONSERVATION ASSOCIATION;  
SIERRA CLUB; WYOMING  
OUTDOOR COUNCIL; BASIN  
ELECTRIC POWER COOPERATIVE;  
PACIFICORP; AMERICAN  
COALITION FOR CLEAN COAL  
ELECTRICITY; ARCH COAL, INC.,

Intervenors.

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POWDER RIVER BASIN RESOURCE  
COUNCIL; NATIONAL PARKS  
CONSERVATION ASSOCIATION;  
SIERRA CLUB,

Petitioners,

No. 14-9529  
(No. EPA-R08-OAR-2012-0026)

v.

No. 14-9530

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; GINA  
MCCARTHY, Administrator, United  
States Environmental Protection Agency,

Respondents.

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STATE OF WYOMING; BASIN  
ELECTRIC POWER COOPERATIVE;  
PACIFICORP; AMERICAN  
COALITION FOR CLEAN COAL  
ELECTRICITY; ARCH COAL, INC.;  
IDAHO POWER COMPANY,

Intervenors.

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BASIN ELECTRIC POWER  
COOPERATIVE,

Petitioner,

v.

No. 14-9533

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; GINA  
MCCARTHY, Administrator, United  
States Environmental Protection Agency,

Respondents.

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POWDER RIVER BASIN RESOURCE  
COUNCIL; NATIONAL PARKS  
CONSERVATION ASSOCIATION;  
SIERRA CLUB; WYOMING

OUTDOOR COUNCIL; PACIFICORP,

Intervenors.

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PACIFICORP,

Petitioner,

v.

No. 14-9534

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; GINA  
MCCARTHY, Administrator, United  
States Environmental Protection Agency,

Respondents.

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POWDER RIVER BASIN RESOURCE  
COUNCIL; NATIONAL PARKS  
CONSERVATION ALLIANCE;  
SIERRA CLUB; WYOMING  
OUTDOOR COUNCIL; BASIN  
ELECTRIC POWER COOPERATIVE,

Intervenors.

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**ORDER**

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Before **KELLY** and **BACHARACH**, Circuit Judges.

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In January 2014, the United States Environmental Protection Agency (EPA) issued a final rule regarding Wyoming's regional haze state implementation plan (SIP). The EPA approved Wyoming's Best Available Retrofit Technology (BART)

determinations for ten coal-fired electric generating units, and approved Wyoming's plan for facilities subject to regional haze requirements that are not power plants. The EPA also approved Wyoming's BART determinations with respect to the control of particulate matter at the five units at issue in these appeals.

The EPA disapproved Wyoming's SIP regarding its BART determinations for nitrogen oxide emissions at Laramie River Station Units 1-3, Dave Johnston Unit 3, and Wyodak Unit 1. The EPA issued its own federal implementation plan (FIP) for these five units, which requires them to install an additional pollution control for nitrogen oxide emissions by March 2019.

Wyoming, Basin Electric Power Cooperative, and PacifiCorp filed motions for a stay pending appeal. Wyoming seeks a stay of that portion of the EPA's final rule disapproving Wyoming's SIP with respect to the BART determinations for the five plants at issue in this appeal. Basin Electric and PacifiCorp seek a stay of that portion of the EPA's final rule issuing an FIP requiring the installation of an additional pollution control. They also request that the March 2019 deadline for complying with the FIP be extended for Laramie River Station Units 1-3, and Wyodak Unit 1 for the duration of time that the stay is in effect. The EPA and the Intervenor (Powder River Basin Resource Council, National Parks Conservation Association, Sierra Club, and Wyoming Outdoor Council) filed oppositions to the stay motions. Wyoming, Basin Electric, and PacifiCorp filed replies in support of their motions.

In deciding whether to grant a stay pending appeal, we consider: (1) the moving party's likelihood of success on appeal; (2) whether the moving party will suffer irreparable injury absent a stay; (3) whether the issuance of the stay will injure the other parties; and (4) where the public interest lies. *See* 10th Cir. R. 8.1.

Upon consideration of the stay factors, we conclude that a stay pending appeal is warranted in these cases. Accordingly, we grant Wyoming, Basin Electric, and PacifiCorp's motions for stay. Basin Electric and PacifiCorp request that the deadline for compliance be extended beyond March 2019 for the duration of the stay. We grant this request for the four units addressed in PacifiCorp and Basin Electric's stay motions (Laramie River Station Units 1-3 and Wyodak Unit 1).

Entered for the Court

A handwritten signature in cursive script, appearing to read "Elisabeth A. Shumaker", written in black ink over a light gray dotted background.

ELISABETH A. SHUMAKER, Clerk